MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 1064 OF 2006

IN

CRIMINAL APPEAL NO. 467 OF 2006

VIJAY PANDURANG WAGHMARE & ORS. .. APPLICANTS

Vs.

THE STATE OF MAHARASHTRA & ANR. .. RESPONDENTS

Mr. Niteen V. Pradhan i/b S. Patil with Mr. S. Hulke for the applicants
Mr. F. R. Shaikh, Addl.PP for State

CORAM: **SMT. RANJANA DESAI, & SMT. R. S. DALVI, JJ**.

DATE: AUGUST 3, 2007.

P.C.

. The applicants are original accused 1 to 3 respectively in Sessions Case No. 160 of 2005 which was tried and disposed of by the learned 1st Ad-hoc Additional Sessions Judge, Sangli on 21/2/06. The applicants were tried along with three others. The applicants are convicted under Section 302 read with 149 of the Indian Penal Code and sentenced to suffer life imprisonment. The appeal preferred by them is admitted. We are dealing with their application for bail.

2. The case of the prosecution is that on 1/4/2005 at about 6-30 p.m. the applicants came to the house of the deceased along with three others. They had weapons in their hands. They assaulted the deceased with the weapons. The deceased received serious injuries on account of which he died. The incident is said to have taken place out of dispute about the property.

3. We have heard Mr. Pradhan, the learned counsel who appears for the applicants. He submitted that the prosecution has suppressed the genesis of the case. The accused have suffered injuries. However, the prosecution has not explained how they suffered injuries. It is obvious, therefore, that the truth has not come forward before the court. The learned counsel contended that admittedly there are no bloodstains at the alleged scene of offence. Therefore, the incident has not taken place there. This casts a shadow of doubt on the prosecution story. He submitted that evidence against the accused is of the son and the daughter of the deceased. They are interested witnesses. Their evidence, therefore, needs corroboration. There is no corroboration available to the evidence of the eye witnesses. The evidence of the eye witnesses

does not inspire confidence. Mr. Pradhan contended that therefore, the applicants should be released on bail. The learned APP strenuously opposed the grant of bail.

4. PW 1 Ajesh is the son of the deceased, he is an injured eye-witness, therefore, his presence at the scene of offence can hardly be disputed. He has stated that accused 1 and 3 had knives in their hands. Accused 2 had a sword in his hand. According to him accused 1 dealt knife blows on his neck and waist on left side and accused 3 dealt knife blow on his waist on right side and accused 2 attacked him with the sword on his left hand elbow. PW 1 Ajesh has also stated that the accused attacked his father.

5. PW 2 is the daughter of the deceased. She is the complainant. Her presence in the house is natural. She has stated that the accused attacked her brother. She has also stated that accused 1 and 2 were having knives in their hands and accused 3 was having sword in his hand. According to her accused 1 gave knife blow on left side of abdomen of her father. Accused 3 gave blow at the back above waist of her father and accused 3 gave blow

with sword on right side of chest of her father. There appears to be no reason to disbelieve these witnesses.

6. So far as the absence of blood at the scene of offence is concerned, Dr. Darbare and Dr. Kulkarni have stated that the blood of the deceased was collected in the abdominal cavity. Therefore, it is possible that there was no profuse bleeding and hence no blood was found at the scene of offence.

7. It is true that the accused were injured. However, the doctor has stated that injuries received by the accused are simple in nature and they could be caused by hard and blunt object. There is no evidence to suggest that the deceased and PW 1 had any weapons in their hands. Therefore, it appears to us that prima facie the accused were the aggressors.

8. The alleged non-explanation of injuries found on the accused by the prosecution and whether there was use of right of private defence can be examined at the final hearing of the appeal. At this stage, we are of the opinion that no case for bail is made

out. Application is rejected.

JUDGE.

JUDGE.